

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

07-M-1054

UNITED STATES OF AMERICA,

v.

JOSE ROMAN,

Defendant.

**SUPPLEMENTAL
SENTENCING STATEMENT AND
OBJECTIONS**

KIMBERLY A. SCHECHTER, affirms under penalty of perjury that:

1. I am an Assistant Federal Defender in the Western District of New York and represent the defendant, Jose Roman. I make this supplemental filing in response to the revisions to the Presentence Report, dated January 18, 2008.

2. Mr. Roman failed to appear for his sentencing date. As a result, the Probation Department has revised his Presentence Investigation Report and now recommends both that he receive a 2-level increase for obstruction of justice and that he lose acceptance of responsibility. (See ¶¶ 9 through 11 and 17 and 18 of the Revised Presentence Report.)

3. The defense does not dispute the application of an obstruction of justice for his failure to appear. He does, however, dispute the recommendation that he lose acceptance of responsibility under the circumstances herein.

4. Mr. Roman did not put the government to its burden of proof at trial, nor did he suggest that he would. He timely entered a plea of guilty.

5. While note 4 of the U.S. Sentencing Guidelines Section 3E1.1 (**Acceptance of Responsibility**) suggests that if the obstruction enhancement applies, that the acceptance of responsibility may not, it is only a suggestion. Moreover, Mr. Roman was not running around for an extended period of time or committing new crimes. Rather, this Court issued an arrest warrant on January 3, 2008 and he was picked up on that warrant within a week.

WHEREFORE, it is respectfully requested that this Court should reduce Mr. Roman's offense level by 2 for accepting responsibility. Such a result would place him in the range of 6 to 12 months in prison.

DATED: Buffalo, New York, February 21, 2008.

Respectfully submitted,

/s/ Kimberly A. Schechter
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To: James P. Kennedy, Jr.
Assistant United States Attorney

Lisa M. Ferraro
United States Probation Officer

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CERTIFICATE OF SERVICE

I hereby certify that on **February 21, 2008**, I electronically filed the foregoing with the Clerk of the District Court using the CM/ECF system, which sent notification of such filing to the following:

1. James P. Kennedy, Jr.
Assistant United States Attorney
Western District of New York
138 Delaware Avenue, Federal Centre
Buffalo, New York 14202

And, I hereby certify that I have e-mailed the document to the following non-CM/ECF participant(s).

1. Lisa M. Ferraro
U.S. Probation Officer
U.S. Probation Department
234 U.S. Courthouse
68 Court Street
Buffalo, New York 14202
lisa_ferraro@nywp.uscourts.gov

/s/ Donna M. Daly

Donna M. Daly
Office of the Federal Defender